IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

CRP.No. 135 of 2006()

OPELE.204/1999 of ADDL.DISTRICT COURT-I,MAVELIKKARA
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REVN. PETITIONER/RESPONDENT:

KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDHYUTHI BHAVAN,
THIRUVANANTHAPURAM.

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB
SRI.JOSE J.MATHEIKEL, SC, KSEB

RESPONDENTS/PETITIONER:

K.V. GOPALAKRISHNA PILLAI,
KOTTUVADIKIZHAKKETHIL, CHUNAKKARA VILLAGE,
CHUNAKKARA VADAKKUM MURI.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

HARUN-UL-RASHID,J

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C.R.P.No.135 of 2006

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Dated this the 7th day of November, 2007

ORDER

This civil revision petition arise out of O.P.(Ele) No.204/1999 on the file of the Additional District Court, Mavelikkara. The common question of law and fact arising in this case is what would be the amount of compensation payable to the claimant for the trees cut and removed by the K.S.E.B who is the revision petitioner in this revision petition. The matter was taken up before the Honourable Supreme Court for deciding the question stated above. Ultimately the apex court disposed of all the special leave petitions by passing a common judgment in C.A.No.1810/2006 and connected cases. The Honourable Supreme Court in para 10 and 11 of the judgment explain the principles to be applied for fixing the compensation, which reads as follows:

> "10.The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was

> meant to be used.
> 11. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case."

2. In para 11 it was held that compensation in relation to fruit bearing trees would depend upon the facts and circumstances of each cases. Therefore, the Honourable Supreme Court directed that the High Court should consider the matter afresh on the merit of each matter. Having regard to the facts and situations obtained there accordingly the order under challenge was set aside and matter was remitted to the High Court for fresh consideration.

3. Apart from the matter dealt with by the Supreme Court similar and connected matters were pending before this Court and this Court by different judgments considered the similar question and also after relying on the decision of the Supreme Court in this case namely **K.S.E.B v. Livisha 2007(3) KLT 1(SC)** set aside the orders under challenge and directed the court below to consider the matter afresh.

4. It is submitted by the counsel for K.S.E.B that, in view

of the fact that the compensation which has to be determined in this case would depend upon the facts and circumstances of the case and therefore a fresh consideration by the court below is necessary in the matter of fixation of compensation. The counsel also submitted that they may be afforded an opportunity to adduce such further evidence and produce such other materials to substantiate their contentions in the light of the decision of the Honurable Supreme Court in K.S.E.B v. Livisha. In the light of the fact that additional evidence has to be adduced by both sides and the fact that the case has to be decided on the facts and circumstances of the case and the fact that decision has to be taken by following the principles laid down by Supreme Court in K.S.E.B v. Livisha, I am of the view that the order under revision is liable to be set aside and the court below should be directed to consider the matter afresh.

Accordingly the order under revision is set aside and the matter is remanded for fresh consideration. The court below shall afford an opportunity to either side to produce such other materials and evidence and shall dispose of the case in the light

of the principles laid down by the Supreme Court and based on the oral and documentary evidence available in this case as expeditiously as possible.

HARUN-UL-RASHID, JUDGE

dvs